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No. 82-43

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JULIA L. ASAM, Ph.D.

Petitioner,

vs.

WILLARD O. STANLEY d/b/a/ POODLE PALACE & AMERICAN LIBERTY INSURANCE COMPANY, Garnishee,

Respondents,

Petition for a Writ of Certiorari to the Supreme Court of Alabama

Julia L. Asam, Ph.D., Pro Se
Petitioner
P.O. Box 2243
Tuscaloosa, Alabama 35403

QUESTIONS PRESENTED FOR REVIEW

1. Did the Supreme Court of Alabama through gross error in interpretation of the English (i.e. the exclusion said "arising out of" which means "caused by" real and personal property which is impossible in the instant case since the research animals mysteriously disappeared and the disappearance of the animals was not caused by real or personal property) of the exclusion quoted (Ex. B) from the Umbrella excess liability policy violate the Appellant's (now Petitioner's) property rights under the Fifth and Fourteenth Amendments of the U.S. Constitution? (See p. 5 of this Petition).

2. Can the Supreme Court of the United States take original jurisdiction or whatever steps necessary under jurisdiction of 28 USC 2106 for a writ of certiorari to reverse the federal constitutional error made by the Supreme Court of Alabama infringing upon Dr. Asam's property rights

under the Fifth and Fourteenth Amendments to the U.S. Constitution because the Supreme Court of Alabama failed to consider the entire Commercial Umbrella Excess Liability policy which showed ambiguities in the exclusions?

(The Supreme Court of Alabama only considered one exclusion under the Commercial Umbrella Excess Liability policy - see exhibit B, p. a-8-a-9 of the Appendix and p. 4 of this Petition, quote of the exclusion).

3. Whether the Supreme Court of Alabama misinterpreted the research mice (250 animals) "mysteriously disappearing" not to be a special peril under the insurance policy (See Alabama Code, 1975, section 27-5-6 for definition of burglary including disposal) and therefore, the Supreme Court of Alabama has infringed upon the "property rights" of Dr. Asam under the Fourteenth Amendment to the

the U.S.Cons itution for Dr. Asam to collect under the $5,000 general property floater, specifically for animals in the care, custody and control, and also causing Dr. Asam to lose the balance of the judgment of $245,000 from the Commercial Excess Liability Policy? (See last paragraph of the Opinion p. a-9 and p. 12 of Brief for Appellant, pertinent part quoted on p. 18 of this Petition showing 250 animals mysteriously disappeared).

4. Whether the Supreme Court of Alabama misinterpreted the general liability policy not to have ambiguous exclusions and therefore, the Supreme Court of Alabama has infringed upon the "property rights" under the Fourteenth Amendment to the U.S. Constitution for Dr. Asam to collect under the $50,000 general liability policy and therefore, the balance of the judgment of $200,000 from

the Commercial Excess Liability policy? (See Opinion p. a-7 and a-8 and p. 22-24 of this Petition discussing the ambiguities of the exclusions of the general liability policy).

PARTIES TO THE PROCEEDING

Julia L. Asam, Ph.D., Petitioner, (Appellant and Plaintiff below).

Willard O. Stanley, Respondent, (Appellee and Defendant below).

American Liberty Insurance Co. Robert L. Stewart, President, Garnishee, Respondent, (Appellee and Defendant below).

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

JULIA L. ASAM, Ph.D.

Petitioner,

vs.

WILLARD O. STANLEY d/b/a/ POODLE PALACE & AMERICAN LIBERTY INSURANCE COMPANY, Garnishee,

Respondents,

Petition for a Writ of Certiorari to the Supreme Court of Alabama

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I.

THE OPINIONS DELIVERED IN THE COURTS BELOW AND THE DATES OF THE JUDGMENTS SOUGHT TO BE REVIEWED

The petitioner, Julia L. Asam, Ph.D., prays that a writ of certiorari issue to review the opinion and decision of the Supreme Court of Alabama rendered in these proceedings on March 19, 1982. The decision and opinion of the Supreme Court of

Alabama, dated March 19, 1982, appears in the Appendix as Exhibit B. The notice of the rehearing overruled, dated April 23, 1982 is in the Appendix as Exhibit C. This Writ of Certiorari to the Supreme Court of the United States is timely filed within 90 days of April 23, 1982. The Judgment Discharging Garnishee, dated July 31, 1981, the decision of the lower Circuit Court of Tuscaloosa County, Alabama is in the Appendix as Exhibit D. The Default Judgment entered by the Court April 24, 1979, in the amount of $250,000, interests and costs is in the Appendix as Exhibit E (Record p. 11).

II

THE STATUTORY PROVISION BELIEVED TO CONFER JURISDICTION ON THIS COURT

Jurisdiction of this Court is invoked under 28 USC section 1257(3); 28 USC section 2106; 42 USC section 1983; and 28 USC section 1343(3). (See Appendix, Exhibit A for Excerpts from the U.S.C.). Also

jurisdiction of this Court is invoked

under U.S. Constitution, Amendment V,
"no person shall ... be deprived of life, liberty or property, without due process of law;"
and U.S. Constitution, Amendment XIV,
"...no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law..."
See case Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 389 U.S. 281, 266, 90 S Ct. 1739, 26 L. Ed. 2d 234 (1970).
"Only the Supreme Court was authorized to review on direct appeal the decisions of state courts."

III

THE IMPORTANCE OF THE ISSUES

Can the Supreme Court of Alabama through a gross error by not considering all the exclusions in the Excess Liability policy and the case law on ambiguities from the same Supreme Court of Alabama deprive Dr. Asam of property rights under the Fourteenth Amendment to the U.S. Constitution?

(See Questions Presented p. i of this Petition for Writ of Certiorari.)

The point is the Supreme Court of Alabama admits there is coverage for Dr. Asam under the Umbrella excess liability policy but for the one exclusion. Quotes from the Opinion of the Supreme Court of Alabama pp. 6-7, which states,

> "Asam reasons that the wording of the umbrella policy indicates that the policy's purpose was not to just provide excess coverage, but rather to expand the coverage to protect against gaps in the underlying policies and would thereby include the present situation. In support, Asam cites the New Jersey Supreme Court case of Bryan Construction Company v. Employers Surplus Lines Insurance Company, 60 N.J. 375, 290 A 2d 138 (1972)."

> "While we find sound reasoning in Asam's argument that the umbrella policy does more than just provide excess coverage, we are nevertheless constrained to hold that Asam's situation with Stanley fails directly within the cited exclusion to the policy, thereby prohibiting coverage."

The exclusion quoted in the Opinion from the Supreme Court of Alabama on p. 6

(Exhibit B, p. a-9 of Appendix).

states,

> "To the insured's liability for bodily injury or property damage, direct or consequential, and expenses on account of loss arising out of real and personal property held by or in the care, custody or control of the insured in any capacity as trustee, guardian, executor, administrator, custodian, escrow, tenant or otherwise."

This exclusion quoted here is not applicable to this instant case because the research animals mysteriously disappeared and according to this exclusion the words "arising out of" means caused by the real and personal property which is impossible in the instant case for real or personal property to cause the research animals to mysteriously disappear. This means the Supreme Court of Alabama made a gross error and violated the property rights of Dr. Asam under the Fifth and Fourteenth Amendments to the U.S. Constitution, and the Supreme Court of Alabama should have reversed the lower court decision and

awarded the full judgment of $250,000.00 interests and costs to Dr. Asam since the Supreme Court of Alabama admits there is coverage under the Umbrella excess liability policy but for the one exclusion cited.

The Supreme Court of the United States should reverse the decision of the Supreme Court of Alabama or remand to the Supreme Court of Alabama to review and rule according to state laws cited in case law below.

> "The infringement by a state of constitutional rights of individuals violates the guaranty of due process where no state interests underlies the state action." (From separate opinion by Hon. Warren, Ch. J. and Black, Douglas, and Brennan, JJ.) Sweezy v. New Hampshire, 354 U.S. 234, 77 S Ct 1203. 1 L Ed. 2d 1311.

IV.

STATEMENT OF THE CASE

This is a Petition for Writ of Certiorari concerning a garnishment of an insurance company after Dr. Asam had obtained a default judgment of $250,000.00. The

chief issues before the Supreme Court of Alabama was to determine if the actions of Stanley covered by the policy with American Liberty Insurance Co. were so as to make American Liberty subject to Asan's writ of garnishment. The Supreme Court of Alabama stated that there was coverage (see quotes on p. 4 of this Petition for Writ of Certiorari and Exhibit B in the Appendix p. a-9 of this brief), but for one exclusion. An Application for Rehearing was filed with the Supreme Court of Alabama April 2, 1982 but overruled April 23, 1982. (Exhibit C of the Appendix p. a-11 of this brief).

The Supreme Court of Alabama erred on p. 7 of its March 19, 1982 opinion wherein the Supreme Court of Alabama found that appellants situation with defendant Stanley falls directly within the cited exclusion to the Commercial Umbrella Excess Liability Policy, thereby

prohibiting coverage. The record (pages 228 and 234) clearly shows an ambiguity in the terms of the Commercial Umbrella Excess Liability Policy which must be resolved in favor of the appellant and against the appellee according to law that was also cited in the Opinion by the Supreme Court of Alabama p. 4 (Exhibit B p. a-6 in the Appendix of this brief) which states,

> "It is a fundamental rule of insurance law that courts construe insurance contracts in a manner to give effect to the intent of the parties; however, any ambiguities in the policy are to be resolved in favor of the insured. Billups v. Alabama Farm Bureau Mutual Casualty Insurance Company, 352 So. 2d 1097 (Ala. 1977).

Appellant (now Petitioner) would respectfully show the pertinent ambiguous terms of the insurance contract, as follows;

"VII. Exclusions

This policy does not apply: (Record p. 228)

"(d) To property damage to...(4)Property rented to, occupied by or in the care,

custody, or control of the insured to the extent the insured is under contract to provide insurance therefor. (Emphasis Added.)

"This policy does not apply: (Record p. 234).

"To the insured's liability for bodily injury or property damage, direct or consequential, and expenses on account of loss arising out of real and personal property held by or in the care, custody, or control of the insured in any capacity as Trustee, Guardian, Executor, Administrator, Custodian, Escrow Tenant or otherwise. (Emphasis Added.)

Paragraph (d) makes it clear that the Commercial Excess Liability Policy would cover property in the care, custody or control of the insured if the insured were not under an obligation to provide other insurance therefor. The additional exclusion on account of loss arising out of real or personal property held by or in the care, custody or control if the insured should be read to mean that the policy excludes liability for damaged caused by property in the care, custody or control of the insured. If appellee had

meant otherwise it could have excluded liability for - damage to real or personal property in the care, custody or control of the insured. Also the custom and usuage of trade should be considered. The cases of Employers Insurance Company of Alabama v. Jeff Gin Company, 378 So 2d 693, 695 (Ala. 1979), Bryan Construction Company v. Employers Surplus Lines Insurance Company, 60 N.J. 375, 290 A 2d 138 (1972), Todd v. German American Insurance Company, 2 GA app. 789, 59 SE 94 and Columbian Mutual Life Insurance Company v. Vasser, 230 Ala. 284, 160 So 696, support this construction. Therefore, the Supreme Court of Alabama's opinion dated March 19, 1982, page 7, is erroneous and should be corrected and the case should be accepted under the jurisdictional provisions listed above in this petition for Writ of Certiorari.

See the federal case, Fleming v. Pan. Am. Fire & Cas. Co., 495 F 2d 535 (5th Cir 1975), which states,

> "Right to collect by garnishment at law exists independently of Alabama statutes making liability of insurer absolute upon occurrence of casualty covered by liability policy and giving injured or damaged party who has recovered final judgment against insured an equitable remedy against insurer." (Quoted from 10A Ala. D-45 (key 34), Interests under insurance policies.)"

V.

REASONS WHY THE WRIT SHOULD BE ALLOWED

1. The Writ of Certiorari should be granted to the Petitioner (Appellant below) because the Supreme Court of Alabama made a gross error in interpreting the English in the exclusion quoted on p. 6 of the Opinion, (Exhibit B of the Appendix p. a-9 which stated (Record p. 234)..."loss arising out of real and personal property" which means caused by real and personal property and this exclusion is not applicable to the instant case since the research animals mysteriously disappeared,

and were not damaged by real and personal property; therefore, the gross error by the Supreme Court of Alabama has caused the property rights of Dr. Asam to be infringed under the Fourteenth Amendment to the U.S. Constitution, which states,

> "nor shall any State deprive any person of life, liberty, or property without due process of law..." (Emphasis added.)

> "The clause "due process of Law" means that there can be no proceeding against life, liberty, or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights." Turpin v. Lemon 187 U.S. 51, 23 S Ct 20, 47 L Ed 70.

Since the Supreme Court of Alabama has departed from the accepted and usual cause of judicial proceedings by failing to follow their own law, the Supreme Court of the United States needs to exercise its power of supervision under 28 USC sec. 2106. See the following cases showing

that ambiguities in an insurance policy should be ruled in favor of the insured. Billups v. Alabama Farm Bureau Mutual Casualty Insurance Co., 352 So 2d 1097 (Ala. 1977) (Cited by the Supreme Court of Alabama Exhibit B p. a-6 of the Appendix for the Opinion); National Sec. Ins. Co. v. Ingalls, 323 So 2d 384, 56 Ala. App. 498; Barnes v. Atlantic & Pac. Life Ins. Co. of America, 295 Ala. 149, 325 So 2d 143 (1975); Federal Insurance Co. v. P.A.T. Homes, Inc. 547 P 2d 1050, 113 Arz. 136.

The business of the insured was to hold property in his care, custody and control and the ambiguous exception from coverage must be construed in favor of the appellant and against the appellee in order to provide maximum coverage. This construction finds further support in the authorities because an "Umbrella Policy" purports to protect against gaps in the underlying

insurance coverage. Bryan Construction Company v. Employers Surplus Lines Insurance Company, 60 N.J. 375, 290 A 2d 138 (1972). The most reasonable construction of the terms of the Umbrella Policy would be to find coverage for property in the care, custody and control of the insured and determine that the so-called real and personal property exclusion (Record p. 234) and cited by the Supreme Court of Alabama, (Exhibit B p. a-9 of Appendix for the Opinion), of the contract refers to damages to other property arising out of real and personal property in the care, custody or control of the insured. The Petitioner stated above that the research animals that mysteriously disappeared could not come under this exclusion since research animals that disappeared could not be influenced by real and personal property. The appellant submits that she has shown an "occurrence" by a mysterious disappearance, which must be concluded as accidental.

2. The Writ of Certiorari should be granted because Dr. Asam's property rights under the Fifth and Fourteenth Amendments to the U.S. Constitution were violated when the Supreme Court of Alabama failed to consider the entire "Umbrella excess liability policy" and based the decision on one exclusion cited p. 6 of the Opinion (Record p. 234) (See Exhibit B p. a-9 of the Appendix for the Opinion). See 42 USC section 1983, and 28 USC 1257(3) for jurisdiction.

Further on the face of this exclusion (Record p. 234), there is no endorsement number like three other attached endorsements (Record pp. 231-233). Further, there is no date on the so-called exclusion (Record p. 234), and no signature. The Supreme Court of the United States should accept original jurisdiction under 28 USC section 2106 or writ of certiorari jurisdiction under 28 USC section 1257(3) to

correct this gross error made by the Supreme Court of Alabama against the constitutional property rights of Dr. Asam under the Fifth and Fourteenth Amendments to the U.S. Constitution. The constitutional issue of the Fourteenth Amendment was raised on the state level in the initial Appellant Brief. Since the Supreme Court of Alabama admitted to coverage under the Umbrella Excess Liability policy as quoted on p. 4 of this Petition for Writ of Certiorari but for this exclusion (Record p. 234), Dr. Asam's property rights under the Fourteenth Amendment to the U.S. Constitution were destroyed forever because the research animals, that mysteriously disappeared, were the life's reseearch project of Dr. Asam who had conducted cancer research on the original lymphomas (P1798 model lymphomas) for 20 years. If Dr. Asam does not receive a significant amount from the insurance

policy rightfully due her, she can never start the research project again for which she has an U.S. Patent.

3. The Writ of Certiorari should be granted because Dr. Asam's property rights under the Fourteenth Amendment to the U.S. Constitution was violated when The Supreme Court of Alabama misinterpreted the general property floater by stating

p. a-9 "does not provide coverage here simply because Asam failed to prove that any of the specified perils caused the loss of the mice."

when Dr. Asam showed mice "mysteriously disappeared"(p. 12 of Brief for Appellant and the special peril is burglary - see p. 25 of Brief for Appellant with reference to Code of Alabama, 1975, Sec. 27-5-6 which defines burglary as "disposal" i.e. no longer present, or mysteriously disappeared - see this Sec. 27-5-6 quoted on p. a-2 of this Petition for Writ of Certiorari).

See Druid City Hospital Bd. v. Epperson, 378 So 2d 696 which states,

> ""In garnishment proceedings, creditor stands in debtor's shoes to enforce debtor's rights against third parties."

that Dr. Asam is standing in the shoes of Mr. Stanley as a judgment creditor pursuant to Alabama law (Code of Alabama, 1975, Sec. 27-23-2 - quoted p. a-2 of the Appendix of this brief).

Quotes from p. 12 of the Brief of Appellant to the Supreme Court of Alabama.

> "The relationship of Mr. Stanley to Dr. Asam was a relationship of bailee and bailor. Dr. Asam was paying for the boarding of her research animals at the Poodle Palace and Mr. Stanley had no research animals to return to Dr. Asam. Mr. Stanley did not have any animal remains or skeletons of the mice to return; therefore, indicating that the mice were removed from the cages. The research mice (250) mysteriously disappeared from the premises of the Poodle Palace on or about August 1976.
> The American Liberty Insurance Co. did not have an exclusion for mysterious disappearance."...

Quotes from p. 25 of the Brief of Appellant to the Supreme Court of Alabama showed the definition of burglary under Code of Ala.

1975, Sec. 27-5-6

> "...burglary and theft include wrongful conversion and disposal."

See Long v. Glidden Mut. Ins. Ass'n, Iowa 1974, 215 N.W. 2d 271 that the burden of proof concerning the applicability of a policy exclusions is upon the insurer. The insurer through the claims supervisor in the transcript of the hearing May 26, 1981 (Record p. R-6), stated that no investigation was made. Therefore, where the evidence fails to establish an affirmative defense of the insurer, recovery may be had. See Appleman's Insurance Law and Practice, Evidence, Weight, Sufficiency, Pt. 82, p. 138, section 12692, "Loss or disappearance".

> "But where the evidence fails to establish an affirmative defense of the insurer, recovery may be had."

Therefore, the General Property Floater should be interpreted according to the English of the statement which reads,

> "Animals on insured's premises while in his care, custody and control with $500 maximum per animal subject to $5000 policy limit." (Record p. 193 and p.

a-14 of the Appendix to this brief). Therefore, it is clear according to the General Property Floater of policy CC-0360 that American Liberty Insurance Co. owes Dr. Asam $5,000.00 under this policy for the loss of the research animals. If American Liberty Insurance Co. owes Dr. Asam $5,000 from the General Property Floater, then the balance of the judgment of $245,000 is owed from the Commercial Umbrella Excess Liability policy.

See Transcript of May 26, 1981 hearing pp. R-20,R-21 in Record (pointed out to The Supreme Court of Alabama p. 28 of Brief for Appellant), in which the Claims Supervisor shows that the excess liability applies after payment of the underlying policy.

Quotes starting on p. R-20

"Q Assuming then that there was coverage under our present situation under the general property floater or under the casualty insurance, would it then apply?

"A If you assume that the coverage would exist under the underlying policy then

you could conjecture a set of circumstances under which the coverage would be applicable here."

"Q Is it your testimony that barring coverage under any of the other policies there would not be coverage under the excess liability policy?

"A The excess liability policy has for its purpose the coverage of excess liability that would not be covered beyond the limits of the liability coverage of the underlying policy.

"Q As part of the whole general overall policy we are talking about here that includes a general property floater, is that correct"

"A Yes, sir. (Then see transcript Record p. R-21).

"Q It also includes what is called casualty insurance?

"A Yes, sir."

4. The Writ of Certiorari should be granted because the Supreme Court of Alabama has misinterpreted the General Liability Policy not to have ambiguous exclusions when the General Liability Policy clearly has ambiguous exclusions as shown below in this brief and therefore, the Supreme Court of Alabama has infringed upon the "property rights" under the Fourteenth Amendments to the U.S. Constitution for Dr. Asam to collect

$50,000 under the general liability policy and the balance of the judgment of $200,000 from the Commercial Excess Liability policy (see p. 21 of this brief for quotes from claims supervisor showing that the excess liability policy covers after the underlying policy limit).

Notice the ambiguous wording of the following statement made by the Claims Supervisor talking about an exclusion in the general liability policy which really includes an exception which is in favor of the third party. The exception is "which has not been physically injured or destroyed", (See Record of transcript pp. R-16-17 for excerpts quoted below from the transcript of the hearing May 26, 1981 of the claims supervisor.)

"Q Let me call your attention, please to M under the comprehensive general liability insurance on the exclusions and if you will explain completely what that paragraph means to loss of use of damage of property?

"A That too, is an exclusion which would indicate that there would be no

"coverage which would apply to loss of use of tangible property which has not been physically injured or destroyed resulting from a delay in or lack of performance by or on behalf of the named insured contract or agreement or failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named insured." (Emphasis added.)

"Therefore, item M, exception to exclusion, under the general liability policy concerning Property destroyed, i.e. no longer on the premises, is applicable in this instant case under Coverage B of the Comprehensive General Liability policy (see Record p. 167 and p. 168)."(Quoted from p. 22 Brief for Appellant to Supreme Court of Alabama).

Item K(Record p. 166 under the exclusions in the general liability policy) is not applicable since Item K is concerned only with property damage and not property destruction like item M, discussed above. The point is that Mr. Stanley had no property (research animals) to return to Dr. Asam because the research animals mysteriously disappeared. The general

liability policy does not have an exclusion against mysteriously disappearing (Record p. 166). Therefore, (Record p. 166), item M is favorable to the insured and item K is ambiguous since only stated property damage not property destruction. See Alabama case, Aetna Casualty & Surety Co. v. Chapman, et al. 200 So 425, (Ala. 1941).

> "When insurance policies prepared by insurer contain provisions reasonably subject to different constuction one favorable to the insurer and one favorable to the insured, the construction favorable to the insured must prevail." (Emphasis added.)

Since the American Liberty Insurance Co. failed to defend and failed to appeal the decision of the default judgment, the American Liberty Insurance Co. is now only concerned with the issue of the garnishment, specifically if there is coverage under the said insurance policy for Dr. Asam.

Oral argument and permission to write merits brief is respectfully requested.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted and the case entertained on its merits. The Supreme Court of Alabama decision should be reversed. The Supreme Court of the United States should reverse the decision of the Circuit Court of Tuscaloosa, County, Alabama and grant judgment for the Petitioner in the amount of $250,000.00 interests and costs under the Commercial Umbrella Excess Liability Policy, issued to Willard O. Stanley by American Liberty Insurance Co. of Birmingham, Alabama. Or as a alternative, the Court should grant judgment for the Petitioner under the General Property Floater Policy ($5,000) and/or General Liability Policy ($50,000) with balance of the judgment up to $250,000 from the Commercial Excess Liability Policy. As another alternative this Court should remand to the lower court for jury trial.

Respectfully submitted,

Julia L. Asam

Julia L. Asam, Ph.D.
Petitioner, Pro Se
P.O. Box 2243
Tuscaloosa, Alabama 35403

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the above and foregoing has been served by certified mail to Mr. Willard O. Stanley, Bearmont Rd., Tuscaloosa, Ala. 35401; Mr. Sam M. Phelps, Phelps, Owens, Jenkins, Gibson & Fowler, Suite 426, First Federal Bldg., Tuscaloosa, Ala. 35402; American Liberty Insurance Co., Mr. Robert L. Stewart, Pres., 105 Vulcan Road, Birmingham, Ala. 35201; Mr. J.O. Sentell, Clerk, Supreme Court of Alabama, P.O. Box 157, Montgomery, Ala. 36101; and Mrs. Doris T. Turner, Clerk, Circuit Court of Tuscaloosa County, Tuscaloosa County Courthouse, Tuscaloosa, Ala. 35401 this 8th day of July 1982.

By: Julia L. Asam
Julia L. Asam, Ph.D., Pro Se

APPENDIX

Exhibit A

Quotes from U.S.C. concerning jurisdiction of The Supreme Court of the United States.

28 USC section 1257 (3)

"(3)By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

28 USC section 2106

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

42 USC section 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usuage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity,

Exhibit A

(continued)
or other proper proceeding for redress."
28 USC section 1343(3)
"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usuage, or any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

ALABAMA STATUTES
Code of Ala. 1975, section 27-23-2 states,
"Rights of judgment creditors."
"Upon the recovery of final judgment against any person... for loss or damage to property, if the defendant in such action was insured against the loss or damage at the time when the right of action arose, the judgment creditor shall be entitled to have the insurance money provided for in the contract of insurance between the insurer and the defendant applied to the satisfaction of the judgment, and if the judgment is not satisfied within 30 days after the date when it is entered, the judgment creditor may proceed against the defendant and insurer to reach and apply the insurance money to the satisfaction of the judgment."
(Emphasis added.)

Code of Ala. 1975, section 27-5-6 states,
"Casualty insurance" defined.
"(a) "Casualty insurance" includes:
...(4) BURGLARY AND THEFT. -- Insurance against loss or damage by burglary, theft, ...or wrongful conversion, disposal..."

Exhibit B

"THE STATE OF ALABAMA ---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1981-82

Julia L. Asam

80-855 v.

American Liberty Insurance Co., et al.

Appeal from Tuscaloosa Circuit Court

SHORES, JUSTICE.

"This is an appeal from an order discharging Julia L. Asam's $250,000 garnishment claim against American Liberty Insurance Company. Asam had earlier obtained a default judgment against American Liberty's insured, Willard O. Stanley, d/b/a Poodle Palce, in the amount of $250,000.

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"Asam's complaint against Stanley alleged the following:

"COUNT ONE

"1. On or about the 7th day of August, 1976, Plaintiff and Defendant entered into an agreement by which Defendant promised to feed, water, care for, and transplant two hundred fifty (250) white mice, which were being used in the carrying on and operating a research cancer project.

"2. Defendant breached the agreement by failing to feed, water, care for, and transplant said mice according to his agreement with the Plaintiff causing the loss of said mice to the damage of the Plaintiff.

"Wherefore Plaintiff demands judgment

Exhibit B

(continued)
against Defendant in the sum of Two Hundred Fifty Thousand and no/100 ($250,000.00) Dollars, interest and costs.

"COUNT TWO

"1. Sometime between the 7th day of August, 1976, and the 18th day of October, 1976, Defendant converted to his own use two hundred fifty (250) white mice being used in cancer research project of the value of Two Hundred Fifty Thousand and No/100 ($250,000.00), the property of Plaintiff.

"Wherefore Plaintiff demands judgment against Defendant in the sum of Two Hundred Fifty Thousand and No/100($250,000.00) Dollars, interest and costs."

"After obtaining her default judgment, Asam then filed her garnishment claim against American Liberty. American Liberty answered that it was not liable to Stanley under the policy of insurance and was not responsible to pay any sums for or on behalf of Stanley. The court agreed and discharged American Liberty. Plaintiff appeals. We affirm.

"The two issues pertinent to this appeal are:

"(1) Were the actions of Stanley covered by the policy

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"with American Liberty so as to make American Liberty subject to Asam's writ of garnishment?

"And, if so, (2) did Stanley fail to perform the notice condition of the policy, thereby breaching the condition precedent to the company's liability?

"It is not necessary to address the latter issue because we hold that the

Exhibit B

(continued)
claim by Asam against Stanley was not covered under the terms of the insurance policy.

"In her brief, Asam contends that three types of coverage in the insurance policy are applicable to her loss. These are: (1) the comprehensive general liability policy; (2) the general policy floater covering animals in the care, custody, and control of Mr. Stanley; and (3) the commercial umbrella insurance liability policy.

"The general liability policy, in pertinent part, provides coverage as follows:

"The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of (A) bodily injury or (B) property damage to which this insurance applies, caused by an occurrence...."

"An "occurrence" is defined in the policy as an "accident, including continuous or repeated exposure to conditions, which results...in ...property damage neither expected nor intended fron the standpoint of the insured."

"The general liability policy also contains certain exclusions pertinent to this appeal:

"This insurance does not apply:

"(a) to liability assumed by the insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty of fitness or quality of the named

insured's products or a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;

Exhibit B

(continued)

". . . .

"(k) to property damage to

". . . .

"(3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control....

". . . .

"(m) to loss of use of tangible property which has not been physically injured or destroyed resulting from

"(1) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement, or

"(2) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or duratility warranted or represented by the named insured. ..." (Emphasis added.)

"In Employers Insurance Company of Alabama v. Jeff Gin Company, 378 So. 2d 693, 695 (Ala. 1979), this Court held that:

"It is a general rule of construction that exceptions to coverage must be interpreted as narrowly as possible for the insured. Further, such exceptions must be construed most strongly against the company drafting and issuing the policy."

"Additionally, the Court held that:

"It is a fundamental rule of insurance law that courts construe insurance contracts in a manner to give effect to the intent of the parties; however, any ambiguities in the policy are to be resolved in favor of the insured. Billups v. Alabama Farm Bureau Mutual Casualty Insurance Company, 352 So. 2d 1097 (Ala. 1977). This Court has

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(continued)
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"frequently held that provisions of insurance policies must be construed in light of the interpretation that ordinary men would place on the language used. Universal Underwriters Insurance Company v. Marriott Homes, Inc., 286 Ala. 231, 238 So. 2d 730 (1970)."
378 So. 2d at 695.

"Asam argues that exclusion (k) is ambiguous when read with exclusions (a) and (m). She asserts that, while exclusion (k) provides an exclusion for property damage to property in the care, custody, or control of the insured, the fact that exclusions (a) and (m) provide exceptions to exclusions for a warranty of fitness and quality and for property that has been physically injured or destroyed should cause the clauses to be interpreted to mean that damage to physical property (e.g. a tin can) would not be covered, but coverage would be provided for workmanship and/or destruction of or injury to animals. She concludes that this reasoning is valid because the obvious intent of the parties would be to provide liability insurance to Stanley's business and both parties knew at the outset that his principal occupation concerns the care and custody of animals.

"After careful review of the insurance policy, we find that the exclusions provided under the general liability policy are not ambiguous and can be logically read independently of the others.

"For example, exclusion (a) provides an exception for situations where Stanley could be liable after selling items used

Exhibit B

(continued)
"in conjunction with his business, such as equipment, grooming instruments, medication, and the like. Also, exclusion (m) could apply to situations where Stanley under-

"took to repair an item and failed to do so. In these contexts, exclusions (a) and (m) do not create ambiguity when read along with (k).

"Therefore, we hold that the exclusion in the policy for liability assumed under contract is valid and avoids coverage under the general liability policy.

"Asam alternatively claims that the commercial umbrella excess liability policy should apply because it specifically covers liability assumed under contract and has no exclusion that would prohibit coverage.

"The policy reads in pertinent part:

"The company will indemnify the insured for ultimate net loss in excess of the retained limit hereinafter stated which the insured may sustain by reason of liability imposed upon the insured by law, or assumed under any contract or agreement by the named insured or by any officer, director, stockholder or employee of the named insured while acting within the scope of his duties as such, for damages because of (a) Personal Injury, (b) Property Damage ... caused by or arising out of an occurrence happening anywhere in the world during the policy period." (Emphasis added.)

"The pertinent exclusion to this policy states:

"This policy does not apply:

Exhibit B

(continued)

"To the insured's liability for bodily injury or property damage, direct or consequential, and expenses on account of loss arising out of real and personal property held by or in the care, custody or control of the insured in any capacity as trustee, guardian, executor, administrator, custodian, escrow tenant or otherwise." (Emphasis added.)

"Asam reasons that the wording of the umbrella policy indicates that the policy's purpose was not to just provide excess coverage, but rather to expand the coverage to protect

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"against gaps in the underlying policies and would thereby include the present situation. In support, Asam cites the New Jersey Supreme Court case of Bryan Construction Company v. Employers Surplus Lines Insurance Company, 60 N.J. 375, 290 A. 2d 138 (1972).

"While we find sound reasoning in Asam's argument that the umbrella policy does more than just provide excess coverage, we are nevertheless constrained to hold that Asam's situation with Stanley falls directly within the cited exclusion to the policy, thereby prohibiting coverage.

"We also hold that the general property floater, which insures "animals on insured premises while in his care, custody and control with a $500 maximum per animal subject to a $5,000 policy limit" against certain specified perils, does not provide coverage here simply because Asam failed to prove that any of the specified perils caused the loss of the mice.

"The judgment is affirmed.

"AFFIRMED.

"Torbert, C. J., Maddox, Jones, and

Exhibit B

(continued)
"Adams, JJ., concur."

"I, J.O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court. Witness my hand this 19 day of Mar.,1982.

/s/J.O. Sentell
Clerk, Supreme Court of Alabama"

Exhibit C

"Office of Clerk of the Supreme Court
State of Alabama
Montgomery
Mailing address:
P.O. Box 157
Montgomery, Alabama 36101
Telephone: 832-6480
April 23, 1982 RE: 80-855

Julia L. Asam
Appellant
vs.
American Liberty Insurance Company, et al.
Appellee

"You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:...
"XXXXXX Application for rehearing overruled. No opinion written on rehearing.

/s/ J.O. Sentell
Clerk, Supreme Court of
Alabama"

4-23-82
wo

Exhibit D

"IN THE CIRCUIT COURT FOR TUSCALOOSA COUNTY, ALABAMA

JULIA L. ASAM,
Plaintiff
vs.
WILLARD O. STANLEY,
Defendant
vs.
AMERICAN LIBERTY INSURANCE COMPANY,
Garnishee

Civil Action no. CV-78-408

"JUDGMENT DISCHARGING GARNISHEE"

"Plaintiff having controverted the Answer of the garnishee, American Liberty Insurance Company, and the issues having been heard by the Court, non-jury, on 26 May 1981, and the Court having heard and considered the same is of the opinion that said garnishee has fully and completely answered the Writ of Garnishment herein and that such garnishee was not indebted to the defendant when the process of garnishment was received or at the time of making of the Answer or during the intervening time and had not in its possesion or control any belongings of the defendant and is, therefore, entitled to be discharged.

"IT IS, THEREFORE, CONSIDERED AND ORDERED that the garnishee, American Liberty Insurance Company, be, and hereby is, discharged from the Writ of Garnishment herein and is hereby awarded costs as provided by law, which such costs are taxed against the plaintiff, for which let execution issue.

"This the 31 day of July, 1981.

s/Fred W. Nicol
Circuit Judge"

(Record p. 144 and p. 145).

Exhibit E

"IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA.

JULIA L. ASAM, Plaintiff, Civil Action no. CV-78-408

vs.

WILLARD O. STANLEY Defendant.

DEFAULT JUDGMENT ENTERED BY COURT

"This action came on the motion of the Plaintiff for a default judgment pursuant to Rule 55(b)(2) of the Alabama Rules of Civil Procedure, and the Defendant having been duly served with the summons and complaint and not being an infant or an unrepresented incompetent person and having failed to plead or otherwise defend, and his default having been duly entered and the Defendant having taken no proceedings since such default was entered,

"It is Ordered and Adjudged, that the Plaintiff recover of the Defendant damages in the amount of $250,000.00, interest and her costs of action.

"Done at Tuscaloosa County, Alabama, this 24 day of April, 1979.

s/ Fred W. Nicol
Circuit Judge Presiding

DOCKET OF ENTRY OF DEFAULT

"Default entered against Defendant, Willard O. Stanley, this 24th day of April, 1979.

s/Doris T. Turner
Clerk

(Record p. 11.)

Exhibit F

"GENERAL PROPERTY FLOATER
THIS POLICY COVERS:
"1. On the following property not exceeding the amount specified with respect to each of the items described, against loss or damage thereto, directly caused by the risks and perils insured against.
"Animals on insured's premises while in his care, custody and control with $500 maximum per animal subject to a $5,000 policy limit." (Emphasis added.)
"TERRITORIAL LIMITS
"2. This policy covers within the limits of the Continental United States & Canada.
"THIS POLICY INSURES AGAINST DIRECT LOSS OR DAMAGE CAUSED BY:
(a) Fire and Lightening;
(b) Cycline, Tornado, Windstorm and Hail;
(c) Explosion, excepting explosion originating in steam boilers, steam pipes, steam turbines, or steam engines;
(d) Riot and riot attending strikes;
(e) Aircraft or objects falling therefrom;
(f) Vehicles running on land or tracks (not owned or operated by the assured or his employees);
(f) Smoke or smudge due to sudden, unusual or faulty operation of any heating or cooking unit;
(h) Collision, derailment or overturning of transporting conveyances, (coupling of conveyances not to be deemed a collision) except as hereinafter provided;
(i) Burglary, Holdup and Robbery, except as hereinafter provided. (Emphasis added.)
...
"EXCLUSIONS
4. This policy does not insure against:
(a) Loss or damage caused by wear, and tear and gradual depreciation, moth, vernin, inherent vice;
(b) Loss caused by or during any process of

Exhibit F

(continued)
"refinishing, renovating or repairing;
(c) Loss caused by dampness of the atmosphere or extremes of temperature;
(d) Loss or damage caused by carelessness or rough handling by the Assured or the Assured's employees;
(e) Loss or damage caused by smoke or smudge from fireplaces or industrial apparatus, or from heating or cooking units unless such units are connected to a chimney by a smoke pipe;
(f) Loss or damage caused by war, invasion, hostilities, rebellion, insurrection, contraband or illegal transportaion & or trade;
(g) Loss or damage caused by burglary from a building or vehicle unless such building or vehicle was locked and there is evidence of forcible entry. ..."

(Record p. 193).